4-6385-17049-CV

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

B.U.I.L.D. Citizen Committee, Michelle Heuer, Chairperson,

Complainants,

vs.

W.I.S.E., and Victor Niska, Chairperson,

Respondents.

NOTICE OF DETERMINATION OF PRIMA FACIE VIOLATION
AND
NOTICE OF AND ORDER FOR EVIDENTIARY HEARING

TO: B.U.I.L.D. Citizen Committee, Michelle Heuer, Chairperson, 108 Maple Avenue, Waverly, MN 55390, and W.I.S.E., Victor Niska, Chairperson, 113 3rd Street South, Waverly, MN 55390.

On January 6, 2006, Michelle Heuer, as Chairperson for B.U.I.L.D. Citizen Committee, filed a Complaint with the Office of Administrative Hearings alleging that W.I.S.E. and Victor Niska violated Minn. Stat. § 211B.06 by preparing and disseminating false campaign material. After reviewing the Complaint and attached exhibits, the undersigned Administrative Law Judge has determined that the Complaint sets forth prima facie violations of Minn. Stat. § 211B.06.

THEREFORE, IT IS HEREBY ORDERED AND NOTICE IS HEREBY GIVEN that this matter will be scheduled for an evidentiary hearing to be held at the Office of Administrative Hearings, 100 Washington Avenue South, Suite 1700, Minneapolis, Minnesota 55401, before three Administrative Law Judges. The evidentiary hearing must be held within 90 days of the date the complaint was filed, pursuant to Minn. Stat. § 211B.35. You will be notified of the date and time of the evidentiary hearing, and the three judges assigned to it, within approximately two weeks of the date of this Order. The evidentiary hearing will be conducted pursuant to Minnesota Statutes § 211B.35. Information about the evidentiary hearing procedures and copies of state statutes may be obtained online at www.oah.state.mn.us and www.revisor.leg.state.mn.us.

At the evidentiary hearing all parties have the right to be represented by legal counsel, by themselves, or by a person of their choice if not otherwise prohibited as the unauthorized practice of law. In addition, the parties have the right to submit evidence, affidavits, documentation and argument for consideration by the Administrative Law Judge. Parties should bring with them all evidence bearing on the case with copies for the Administrative Law Judge and opposing party.

At the conclusion of the evidentiary hearing, the Administrative Law Judges will choose to: (1) dismiss the complaint, (2) issue a reprimand, (3) find a violation of 211B.06, and/or (4) impose a civil penalty of up to $5,000. The panel may also refer the complaint to the appropriate county attorney for criminal prosecution. A party aggrieved

by the decision of the panel is entitled to judicial review of the decision as provided in Minn. Stat. §§ 14.63 to 14.69.

Any party who needs an accommodation for a disability in order to participate in this hearing process may request one. Examples of reasonable accommodations include wheelchair accessibility, an interpreter, or Braille or large-print materials. If any party requires an interpreter, the Administrative Law Judge must be promptly notified. To arrange an accommodation, contact the Office of Administrative Hearings at 100 Washington Avenue South, Suite 1700, Minneapolis, MN 55401, or call 612/341-7610 (voice) or 612/341-7346 (TTY).

Dated: January 10, 2006

/s/ Bruce H. Johnson
BRUCE H. JOHNSON
Administrative Law Judge

MEMORANDUM

The Complaint concerns the December 13, 2005, bond ballot proposal for a school building project for Independent School District (ISD) 2687 Howard Lake, Waverly-Winsted (HLWW). The Complainants are "B.U.I.L.D.", a citizen group which supported passing the school building project, and its chairperson Michelle Heuer. The Respondents are "W.I.S.E.,"[1] an organization opposed to the bonding proposal, and its chairperson Victor Niska.

The Complaint alleges that several pieces of campaign material prepared and disseminated by the Respondents contained false statements of fact in violation of Minn. Stat. § 211B.06. Section 211B.06 prohibits the intentional preparation or dissemination of false campaign material with respect to the effect of a ballot question. In *Kennedy v. Voss,*[2] the Minnesota Supreme Court observed that the statute is directed against the evil of making false statements of fact and not against unfavorable deductions or inferences based on fact, even if the inferences are "extreme and illogical."[3] The Court pointed out that the public is protected from such extreme inferences by the candidate's ability to rebut remarks during the campaign process.[4]

A challenged statement's specificity and verifiability, as well as its literary and public context, are factors to be considered when distinguishing between fact and opinion.[5] The statement that must be proved false is not necessarily the literal phrase published but rather what a reasonable reader would have understood the author to have said; expressions of opinion, rhetoric, and figurative language are generally protected speech if, in context, the reader would understand the statement is not a representation of fact.[6] Each allegation in the Complaint will addressed below.

Exhibit 1 (Campaign Postcard entitled: "Statistics Too Often Can be Manipulated to Misrepresent the Bigger Picture")

The Complainants allege that the following statements in Ex. 1 are false:

(1) "Long Term Enrollment Has Been Declining."

The Complainants maintain that this statement is false because enrollment in ISD 2687 has increased in four of the last five years and is up significantly in elementary classes. However, the statement's context must be considered. On one side of the postcard, the Respondents discuss housing growth and enrollment in ISD 2687. The Respondents state that "enrollment has been moving sideways for the last 8 years and has been declining over the last 17 years." The statement "Long Term Enrollment Has Been Declining" appears on the other side of the postcard and refers to Respondents' claim that enrollment has been declining over the last 17 years.

The Administrative Law Judge concludes that the Complaint does not allege a prima facie violation of section 211B.06 with respect to this statement. Even if the evidence were to establish, as the Complainants claim, that enrollment has increased in four of the last five years, that would not make false Respondents' statement that *long term* enrollment has been declining over the last 17 years. The Complainants have not alleged facts sufficient to establish a violation of Minn. Stat. § 211B.06 with respect to this statement and this allegation is dismissed.

(2) "We don't have a growth/space problem."

This statement refers to classroom "space problems" due to housing growth. The Complainants argue that this statement is false because the school district does have a space problem. According to the Complaint, students are being taught in converted closets and sometimes three teachers are teaching three different groups of students in one classroom at the same time.

The Administrative Law Judge concludes that the Complaint fails to state a prima facie violation of Minn. Stat. § 211B.06 with respect to this statement. The statement, "We don't have a growth/space problem," is an opinion and not a statement of fact. Even if there is crowding in the schools, people can have differences in opinion as to whether it is a "problem." Minn. Stat. § 211B.06 is directed against false statements of fact and not opinions. This allegation is dismissed.

(3) "'Group Learning' – Which Requires Larger Classrooms – is an Educational Fad Already Being Rejected (due to Poor Academic Achievement Scores) in Eastern States. Voters Should Reject The Failed Fad And The Larger Classrooms."

The Complainants allege that these statements are false because the school district does not employ any type of "special 'group learning' method of teaching." However, in this statement, the Respondents do not state either that the School District has implemented a group learning program of instruction or that it intends to implement such a program after new facilities are constructed. Rather, the statements infer that larger classrooms contemplated by the building project may result in implementation of a group learning program. As previously noted, the Minnesota Supreme Court has held

that inferences based on fact, even extreme and illogical ones, do not come within the purview of Minn. Stat. § 211B.06.[7] Accordingly, even though an inference that the school building program may result in group learning appears to be baseless and illogical, it does not give rise to a violation of the law. In addition, the statements reflect Respondents' opinion that "group learning" is a "fad" and a failed method of teaching. For all of these reasons, the Administrative Law Judge concludes that the Complainants have failed to establish a prima facie violation of Minn. Stat. § 211B.06 with respect to this allegation.

Exhibit 2 (Campaign Postcard entitled: "Why Must HLWW Taxpayers Fund Such Waste?")

The Complainants allege the following statements are false in Exhibit 2:

(1) "An experienced MN public schools facility manager, and also a member of the WISE committee, looked over the HLWW proposed building and remodeling plans. He found – Bond money (proposed to take 25 years to re-pay) will be spent to purchase: Single ply roofs (7 to 10 year life expectancy (LE) even though the district has been fixing and fixing their current single ply roofs); Sheet rock walls (10 years LE) and future MOLD problems; Roof top HVAC units (8 to 12 years LE); and paver tile floors – very brittle and maintenance intensive."

The Complaint alleges that the above statements are false. Although the Complainants concede that life expectancies for building components vary, the Complainants maintain that the roof will last longer than 7-10 years, the sheet rock will last more than 10 years, and the roof top HVAC units will not require any more maintenance than other systems and will last longer than 8 to 12 years.

The Administrative Law Judge concludes that the statements attributed to the "public school facility manager" are statements of professional opinion, which could be contradicted by other professional opinions but cannot be proven false. Again, statements of opinion do not come within the purview of Minn. Stat. § 211B.06. This allegation is dismissed as not stating a prima facie violation of Minn. Stat. § 211B.06.

(2) "A parking lot of 322 car spaces is planned for a gym that seats 1,000 people. Will taxpayers have to fund future parking lots? If so, what else is the Architect not telling us?"

The Complainants maintain that these statements imply that the proposed parking lot is too small and that such an implication is false because the lot meets standard design criteria and the design of the parking lot was chosen after a two year process, which included community meetings and informational mailings.

The Respondents are merely questioning whether the parking lot is of adequate size. The questions raised by Respondents are not false statements of fact, and at most imply an opinion that the lot may be too small. The Complaint fails to establish a prima facie violation of Minn. Stat. § 211B.06 with respect to this allegation and this allegation is dismissed.

(3) "The architect receives 6 ½ - 7 % of construction/remodeling costs, equaling $1.4 million. A Home Depot sales representative told us that after "Katrina," building materials prices went up but are now down to near pre-Katrina levels. Yet the same architect advised a $960,000 increase in building costs due to "Katrina." …. We noticed the architect doesn't list the K-12 school building in Lakeview ISD Cottonwood, MN as a reference. Voters should email or write us for a Lakewood reference before approving this proposal and, as a result, engaging their same architect."

The Complainants argue first that this discussion about the project's architect implies the Lakeview/Cottonwood ISD was not satisfied with the architect's work. The Complainants maintain that this is false and they have attached a letter indicating that the Lakeview/Cottonwood school district was very satisfied with the work of this architectural firm. The Complainants also explain the basis for the costs and fees identified by the Respondents. For example, the Complainants state that surcharges and contingencies are common in long term projects and Complainants point out that most of the materials available at Home Depot are not commercial grade and would be unusable in a institutional building project.

The Administrative Law Judge concludes that the Complainants have failed to identify false statements of fact in the above paragraph. While Respondents may imply that the Lakeview/Cottonwood school district was dissatisfied with the same architect's work, Respondents' statement only invites voters to email WISE to obtain further information about the Lakeview/Cottonwood project. Complainants have failed to allege a prima facie violation of Minn. Stat. § 211B.06 with respect to this claim and the allegation is dismissed. In addition, Complainants' explanation for the costs and fees does not render false any of the Respondents' statements identified in this paragraph. Complainants do not challenge the truth of the statements. They merely contend that the information from Home Depot is irrelevant to the issues to be decided by the voters. Minn. Stat. § 211B.06 does not prohibit irrelevant statements. Because Complainants have failed to state a prima facie violation of Minn. Stat. § 211B.06, this allegation is dismissed.

Exhibit 3 (Campaign postcard entitled: "Taxes, Taxes, Taxes")

The Complainants allege the following statements in Exhibit 3 are false:

(1) "Like most Minnesotans, HLWW taxpayers saw their tax support of schools shift from property taxes to state income taxes a few years ago. With high income taxes, state aid to HLWW struggling the last several years, and with HLWW annual operating expenses of $5.8 million in 1996-97 rising to $7.6 million in 2003-04 the board now proposes an aggressive new property tax bill for such a wasteful project as a $26.5 million building project. So where does this all end?"

The Complainants argues that no such "tax shift" occurred in this or any other district. The Administrative Law Judge concludes that Complainants have established a prima facie violation of Minn. Stat. § 211B.06 with respect to this allegation. If the evidence were to establish that, contrary to Respondents' statement, no shift from

property taxes to state income taxes occurred this may be sufficient to establish a violation of Minn. Stat. § 211B.06.

(2) "… if the proposed tax levy of $0.28 per $100 tax capacity were on the books last year the taxes on a typical $100,000 home in the HLWW district would have increased 225% to $358.44, placing us 140th out of 349 Minnesota district's property tax levies. We are a small rural district to be paying such a high rate."

Complainants state that of all the districts in the area that have done building projects in the last 5 to 7 years, this project is the most meager. In addition, the Complainants points out that any school that does a building project moves up in property tax levy ranking and currently HLWW has no building bonds (debt) outstanding.

The Administrative Law Judge concludes that Complainants have failed to state a prima facie violation of Minn. Stat. § 211B.06 with respect to the above-identified statements. The Complainants are not challenging the truth of the statements identified above. Rather, the Complainants are offering an explanation as to why these statements should not influence the voters. This allegation is dismissed.

Exhibit 4 (four page statement by Victor Niska dated November 24, 2005)

(1) "A building bond sold and paid for over 25 years, yet building systems in the building of much less life – Single ply roofs 7 to 10 years; Sheet rock walls – 10 years; Roof top HVAC units 8 to 12 years."

The Complainants argue that the life expectancies of these components vary but that they are longer than what Respondents have claimed. As previously noted, the Minnesota Supreme Court has indicated that the context of a statement must be considered when distinguishing between fact and opinion.[8] Exhibit 2 indicates that Respondents' estimates of the life expectancies of various building components were based on the opinions of an "experienced MN public schools facilities manager." The Respondents' statements concerning the life expectancies of building components in Exhibit 4 are similarly statements of professional opinion and are outside the purview of Minn. Stat. § 211B.06. This allegation is also dismissed.

(2) "The best way to remember to vote is to vote absentee ballot. Do it Today! Inquire at the District Offices in Howard Lake or Remember to VOTE "NO" Dec. 13th, 2005."

The Complainants state that the law stipulates very specific rules regarding voting by absentee ballot and that voting by absentee simply to avoid forgetting to vote is not a valid reason. The Administrative Law Judge concludes that the Complainants have failed to establish a prima facie violation of Minn. Stat. § 211B.06 with respect to Respondents' statements regarding voting absentee. Respondents do not urge voters to violate election laws. They are merely encouraging voters to vote and to inquire about whether they qualify to vote absentee. The Complainants have not identified a false statement of fact with respect to this claim. This allegation is dismissed.

(3) "No mention has been made about how to fund the additional operating costs for a new building. Where is the money that will pay for additional teachers, support staff – custodians, secretaries, cooks, aids, bus drivers, etc.? How about the money to pay the utilities, electricity, heating, water, sewer, etc.?"

The statement that must be proved false is not necessarily the literal phrase published but rather what a reasonable reader would have understood the author to have said; expressions of opinion, rhetoric, and figurative language are generally protected speech if, in context, the reader would understand the statement is not a representation of fact.[9] The Complainants assert that this statement is false because the School District addressed these funding issues at great length through a series of community meetings, mailings, and communications. However, the Administrative Law Judge concludes that, when viewed in context, a reasonable reader would have understood that Respondents were stating an opinion that the School District's information regarding funding the additional operating costs was insufficient; not that the School District literally made no mention about how to fund additional operating costs. Whether the information provided by the School District was sufficient is a matter of opinion. The Complainants have failed to establish a prima facie violation of Minn. Stat. § 211B.06 with respect to this allegation and it is dismissed.

(4) "Architect will be paid 6 ½ to 7 % of the construction/remodeling costs. This is $1.4 million dollars ($1,400,000) for 2 years of work. The contract is already signed. They, the Architect or the School Board, are not willing to even look at, consider, or discuss any changes.

The Complainants state only that the School District addressed "this" at great length through a series of community meetings, that the process for choosing the design and architect took two years, and that the rate for the architect is common and competitive. The Administrative Law Judge concludes that the Complainants have failed to identify a false statement of fact in the above identified paragraph. Instead, the Complainants attempt to explain the process in choosing the design and agreeing to the terms of the contract. The Complainants do not challenge the truth of the statements. Rather the Complainants state that the architect's contract resulted from a fair and open process. The Complainants have failed to establish a prima facie violation of Minn. Stat. § 211B.06 with respect to these statements and this allegation is dismissed.

(5) "The construction delivery method is decided to be a General Contractor, also agreed upon in a written contract. This will take the District out of the majority of the construction details, decisions, and quality control. …."

The Complainants state that, contrary to Respondents' claim, the Superintendent, School Board and Building Committee will have access and input to the project throughout the building process. Contracts, including construction contracts, are the result of bargaining between specific parties, and their terms can vary widely. The thrust of Respondents' statement is that the specific construction contract that the School District is proposing "will take the District out of the majority of the construction details, decisions, and quality control." Whether or not the proposed contract will have

that effect is a disputed question of fact. The contract or contract proposal at issued is not yet a matter of record. Therefore, the question of whether Respondents' statement about that contract is false must be addressed in an evidentiary hearing.[10]

(6) "Katrina Hurricane, the School Board voted to increase the amount of the bond by $960,000 at the recommendation of the Architect, claiming the increase was needed because of the increase price of building materials. Did the Architect offer to forgo the 6 ½ % fee on this amount, which is $58,000? NO! I personally had a conversation with a Home Depot sales representative . . . [who said prices for building materials] went up for a while and are now going down and are almost back to where they were before Katrina."

The Complainants explain the purpose of the added contingency amount and also states that most of the materials available at Home Depot are not commercial grade and would not be useable in an institutional project. The Administrative Law Judge concludes that the Complainants have failed to state a prima facie violation of Minn. Stat. § 211B.06 with respect to these statements. Whether the $960,000 increase in bonding was necessary to address construction contingencies is a matter of opinion. This allegation is dismissed.

(7) "The Architect's opinion is that a parking lot of 322 cars will adequately handle parking for a facility with a gym that seats 1000 people. . . . Are we looking at the need to fund additional parking lots in the very near future? What else is the Architect not telling us?"

The Complainants state that the proposed parking lot meets standard design criteria for the project. The Administrative Law Judge concludes that the Complainants have failed to establish a prima facie violation of Minn. Stat. § 211B.06 with respect to these statements. Respondents merely imply that the proposed parking lot may be too small, which is a matter of opinion. This allegation is dismissed.

(8) "Bad economy – fixed income – high food, high gas, and high medical costs – what's ahead? Not a good time for frivolous spending!"

The Complainants point out that schools have been built during the depression. This may be so, but it does not render Respondents' concerns and opinions false statements of fact. The Complainants have failed to establish a prima facie violation of Minn. Stat. § 211B.06 with respect to this allegation and it is dismissed.

(9) "Sheet rock walls = MOLD unhealthy environment for our children. Short life, maintenance times and cost intensive. We will have paid for hard surface walls in a short time."

The Complainants do not challenge the truth of these statements. Instead, the Complainants explain that mold resistant sheet rock is available and that hard surface walls will be used in halls and common areas of high traffic. The Administrative Law Judge concludes that the statements in item 9 reflect the Respondents' opinion about the School District's choice of building material. The Complainants have not

established that the statements are false statements of fact in violation of Minn. Stat. § 211B.06. Accordingly, this allegation is dismissed.

(10) "Paver tile – very brittle and maintenance intensive – many much better flooring systems available today."

Again, this statement reflects the Respondents' opinion of the District's choice of building material. It is not a false statement of fact. The Complainants have failed to establish a prima facie violation of Minn. Stat. § 211B.06 with respect to this statement and this allegation is dismissed.

(11) "Roof top units – useful life of 8 to 10 years – many industry standard say the most expensive life cycle cost of any HVAC system equipment. Very high operating cost. User comfort satisfaction marginal. Noisy!! . . . "

Again, this statement reflects Respondents' opinion of the District's choice of building material. It is not a false statement of fact. The Complainants have failed to establish a prima facie violation of Minn. Stat. § 211B.06 with respect to this statement and this allegation is dismissed.

(12) "Why are the District taxpayers being asked to pay for the installing of the water and sewer lines out to the site, 3 miles south of the city limits? Who will benefit from all of the future development that these lines will provide for?"

According to the Complainants, the city has indicated that it has no use for the sewer line and future developers will have the option to hook into the water line and pay the school district for that privilege. The Administrative Law Judge concludes that the Complainants have failed to establish a prima facie violation of Minn. Stat. § 211B.06 with respect to these statements. The Respondents are merely asking questions about the sewer line. The Complainants have not identified any false statement of fact. This allegation is dismissed.

(13) "SGN was the architect on the school project in Cottonwood, Minn. Lakeview K-12 building, . . . Why did SGN not tell the district this fact and why was Lakeview not included in the advertisement materials of SGN? Could it be that they were not so happy and content with their construction experience?"

The Complainants state that contrary to Respondents' implication, the Lakeview/Cottonwood School District was well satisfied with the work of SGN. Again, Respondents are merely asking questions in item 13. The Complainants have not identified a false statement of fact and have failed to establish a prima facie violation of Minn. Stat. § 211B.06. This allegation is dismissed.

(14) "The District's promotional brochure states on the front page "A Community – Driven Proposal." Yet, when one taxpayer of the District made suggestions as to the Architect's signed contract, the construction delivery methods, and the selection of building materials and systems, he was totally ignored and belittled."

This is again a statement of opinion and cannot form the basis of a section 211B.06 violation. This allegation is dismissed.

(15) "When single ply roofs leak they can cause damage to the walls and building contents below. The District has been fixing, fixing and fixing their single ply roofs on their existing buildings and the Architect is proposing to install more on the new building. If we total up what we have spent over the past 20 years on roofs in the District, I am sure that we have spent enough to have the best roof system available today and all we have is a patched up mess."

The Complainants explain that the existing roofs and buildings date back to 1915 and that no major remodeling renovation has been done since. The Complainants state that the new roof is desperately needed and will meet or exceed code requirements. The Administrative Law Judge concludes that the Complainants have failed to establish a prima facie violation of Minn. Stat. § 211B.06 with respect to these statements. Again the statements reflect the Respondents' opinion and are not false statements of fact. The Complainants do not challenge the truth of the statements. Rather, the Complainants explain why the new roofs are needed. The Complainants' explanation is insufficient to support finding a prima facie violation, and this allegation is dismissed.

(16) "I have personally been offered a bribe by SGN Architect's – free tickets to the Twins game during the World Series. What are they offering or have offered today when the Administration and Board members are so comfortable with SGN?"

The Complainants have established a prima facie violation of Minn. Stat. § 211B.06 with respect to this allegation. If the evidence at the hearing were to establish that SGN did not offer bribes, those facts may be sufficient to support finding that Respondents violated Minn. Stat. § 211B.06.

(17) "What it the total % increase in the property tax impact of this vote?"

This is a question and not a false statement of fact. The Complainants have failed to establish a prima facie violation of Minn. Stat. § 211B.06 with respect to this question and this allegation is dismissed.

In summary the Administrative Law Judge finds the Complaint alleges prima facie violations of Minn. Stat. § 211B.06 with respect to the following statements:

Exhibit 3, Item 1: ""Like most Minnesotans, HLWW taxpayers saw their tax support of schools shift from property taxes to state income taxes a few years ago. "

Exhibit 4, Item 5: "The construction delivery method is decided to be a General Contractor, also agreed upon in a written contract. This will take the District out of the majority of the construction details, decisions, and quality control. …."

Exhibit 4, Item 16: "I have personally been offered a bribe by SGN Architects – free tickets to the Twins game during the World Series. What are they offering or have

offered today when the Administration and Board members are so comfortable with SGN?"

All of the other allegations are dismissed.

B.H.J.

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[1] "W.I.S.E." stands for: "We Insist on Sound Education."
[2] 304 N.W.2d 299 (Minn. 1981).
[3] 304 N.W.2d at 300.
[4] *Id*.
[5] *Diesen v. Hessburg*, 455 N.W.2d 446, 451 (Minn. 1990).
[6] *Jadwin v. Minneapolis Star and Tribune*, 390 N.W.2d 437, 441 (Minn. App. 1986), *citing Old Dominion Branch No. 496, National Assoc. of Letter Carriers v. Austin*, 418 U.S. 264, 284-86 (1974); *Greenbelt Coop. Publishing Assoc. v. Bresler*, 398 U.S. 6, 13-14 (1970). *See also Milkovich v. Lorain Journal Co.*, 497 U.S. 1, 16-17 (1990); *Hunter v. Hartman*, 545 N.W.2d 699, 706 (Minn. App. 1996).
[7] *Kennedy v. Voss, supra*, 304 N.W.2d at 300.
[8] *Diesen v. Hessburg, supra*, 455 new at 451.
[9] *Jadwin v. Minneapolis Star and Tribune*, 390 N.W.2d 437, 441 (Minn. App. 1986), *citing Old Dominion Branch No. 496, National Assoc. of Letter Carriers v. Austin*, 418 U.S. 264, 284-86 (1974); *Greenbelt Coop. Publishing Assoc. v. Bresler*, 398 U.S. 6, 13-14 (1970). *See also Milkovich v. Lorain Journal Co.*, 497 U.S. 1, 16-17 (1990); *Hunter v. Hartman*, 545 N.W.2d 699, 706 (Minn. App. 1996).

[10] It is the ALJ's observation that the only evidence that may be required to adjudicate this claim is the text of the contract or proposed contract.